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C O N F I D E N T I A L NAIROBI 001075

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SUBJECT: COUNTER-TERRORISM LEGISLATION AND HUMAN RIGHTS:
DISCUSSING THE BALANCE

REF: 05 NAIROBI 33546

Classified By: POL/C Michael J. Fitzpatrick, reasons 1.4 (b,d)

¶1. (U) SUMMARY: The International Commission of Jurists (ICJ) held an East African regional hearing February 27-28 on implementation of counter-terrorism (CT) legislation and its compatibility with international human rights laws. The ICJ's ultimate goal is to make recommendations on finding the right balance between CT and respect for human rights. Kenyan presenters repeatedly blamed the U.S. for "forcing" CT measures on the Kenyan government, falsely claiming Kenya's failed 2003 counter-terrorism bill was based on the U.S. Patriot Act, and resurrected claims of &foreign agents8 torturing Muslims in the course of CT investigations. Anti-American sentiment aside, the hearings provided some constructive dialogue that should help the Kenyan Government publish a new CT bill in the near future. However, lingering civil society mistrust and Parliament's all-consuming preoccupation with partisan bickering make it unlikely that either will accept any new CT bill any time soon. END SUMMARY

¶2. (U) The International Commission of Jurists' (ICJ) Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights held an East Africa regional hearing February 27-28 in Nairobi. Participants from Kenya, Uganda and Tanzania discussed how CT legislation and measures should coincide with the protection of human rights. The Panel is conducting public hearings in countries and regions around the world that have suffered terrorist attacks to discuss how to combat terrorism without disregarding the rule of law. The Panel will prepare reports on each hearing and seek to advise governments on drafting appropriate legislation. A similar panel is scheduled to take place in Washington, D.C. in late spring.

Kenya Behind the Curve

¶3. (U) The Kenyan Government (GOK) is far behind its neighbors in enacting CT legislation. Tanzania and Uganda each passed their anti-terrorism laws in 2002. Kenya attempted to pass a Suppression of Terrorism Bill in 2003, but it was rejected by the public and heavily criticized by human rights groups (as well as by this mission). (NOTE: Some provisions of the bill were crafted in such a way that they would have given the government extensive powers to act on mere suspicion of terrorist connections. Given the Moi regime's abuse of such powers, Kenyan civil society groups were loathe to again allow such sweeping powers. END NOTE.) The GOK has since sought input from civil society and redrafted the bill (reftel), but has yet to submit the new bill to parliament. As a result, while Ugandan and Tanzanian

presenters spoke of the merits and faults of their current legislation, most Kenyan presenters dwelled on the (dead) 2003 draft, rehashing old criticisms and misinformation.

14. (U) The first presenter, George Kegoro of the Institute for Security Studies in South Africa, spoke on regional perspectives of terrorism and human rights in East Africa. Much of his speech criticized the GOK for its inability to pass legislation and fulfill its obligation to comply with UN terrorism resolutions. He said the GOK, failing to push through CT legislation, is now using anti-money laundering legislation as a back door method to address CT issues. (NOTE: The anti-money laundering bill, like the CT bill, is still sitting in the Attorney General,s (AG) office and has yet to be presented to the Cabinet, much less Parliament. END NOTE). Kegoro stated the inadequacy of a true definition of terrorism has led East African lawmakers to use what he termed as definitions by example, leaving the door open to condemning &legitimate political opposition groups8 as terrorists.

Blaming the Americans

15. (U) There was a not-so-subtle anti-American tone to a large portion of the hearing. One of the two panel heads remarked: &In Switzerland, we passed CT legislation because of U.S. pressure. In your country, is the process autonomous, or is it because of outside pressure?8 Several Kenyan presenters falsely said the 2003 draft was based on the U.S. Patriot Act and accused the GOK of bending to Western pressure. Law Society of Kenya (LSK) representative Evans Monari claimed the 2003 bill was based on &a corresponding U.S. bill8 and accused the GOK of ceding the nation,s sovereignty to &a known foreign power.8 He gave a long list of problems with the draft, such as an inaccurate definition of terrorism, undefined penalties, and blanket branding of all Muslims as fanatics. (NOTE: His specific criticisms are not inaccurate, as the original draft of the bill did have many of the mentioned problems. END NOTE). He advocated for a "home-grown" law and also said local terrorism must be considered, claiming there are urban terrorist groups in Kenya. This point was challenged by the Chairperson of the panel, who stressed the need for separating political opposition groups and terrorists.

16. (U) Human rights groups then accused the U.S. of being behind blanket discrimination against Muslims in Kenya following the 1998 U.S. Embassy bombing and 2002 Kikambala terrorist attacks. Edris Omondi, of the Centre for Governance and Development, spoke about torture and ill treatment of terror suspects in Kenya. He accused &foreign agents8 of vioating Kenyans, rights by conducting interviews of terror suspects without Kenyan police or lawyers present. Omondi made several references to the U.S. Patriot Act, saying the GOK does not respect international law or human rights because of the influence behind their draft legislation. Stephen Ouma of the Kenyan Human Rights Commission (KHRC) said U.S. pressure on the GOK to dismantle terrorist networks following the 1998 Embassy bombing led to targeting of Kenyan Muslims. He gave examples of arbitrary arrests, illegal detentions, and cases of torture. Ouma used a 2004 Amnesty International report to justify most of his arguments, then admitted that KHRC was the primary source for the AI report. (NOTE: Amnesty International published in September, 2004, a &Memorandum to the Kenyan Government on the Suppression of Terrorism Bill 20038 condemning the draft bill on grounds of its potential to allow human rights violations. END NOTE).

GOK Says New Draft Coming Soon

17. (C) The lone GOK representative, Richard Ogetti from the National Counter Terrorism Center and the Attorney General,s office, explained the GOK,s efforts to incorporate civil

society,s recommendations into a revised draft. He estimated the bill would be distributed to stakeholders within the next month or two for review. Ogetti said the new draft does not contradict human rights laws, and all references to Muslims and inappropriate targeting have been removed. Other revisions include a more adequate definition of terrorism; provisions for seized property victim compensation; 24-hour maximum detention for non-capital offenses; and guarantees of civil, not military, trials for terror suspects. (NOTE: Post obtained a copy of the revised bill in August, 2005 (reftel). The drafters amended the blatantly anti-Muslim sections of the previous draft, removing language that had caused great concern among human rights groups and the Muslim population. A subsequent draft focused on legal definitions, search and arrest procedures, investigations and other legal requirements. END NOTE).

18. (U) Ogetti pointed out some of the challenges facing the AG,s office that cannot be addressed solely in a new CT bill. He said the lack of a witness protection bill has hindered prosecutions and said the AG is considering this as supporting legislation to any CT bill. He also cited a lack of awareness among prosecutors, judicial employees and the police as a major roadblock in terror prosecutions. Lack of legislation for mutual legal assistance is another problem, as some investigations are too complex for Kenyan authorities. All these issues are on the AG,s desk, but the 2006 CT bill is the first priority, he said, and should be published shortly.

19. (C) COMMENT: Despite Ogetti,s assurances that a new bill that addresses the human rights community,s concerns is in the works, the majority of presenters continued to focus on grievances with the 2003 draft. There was little effort to move the debate past the egregious offenses in the initial draft. We cannot be certain the human rights community and other stakeholders will be able to read the new draft with a fresh eye. In the current political climate, it is likely that any draft will be highly politicized and used to criticize the GOK. Even if the AG publishes a 2006 CT Bill in the near future, the chances of it successfully passing through civil society and then Parliament this year are slim.
END COMMENT.
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